

P.E.R.C. NO. 2012-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-2011-097

NEWARK DEPUTY CHIEFS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission remands an unfair practice charge to the Director of Unfair Practices for Complaint issuance. The charge alleges that the City of Newark violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it unilaterally modified and reduced the number of health benefit options for members of the Newark Deputy Chiefs Association and increased employee contributions between 60 and 294% depending on plan selection. The Director had dismissed the charge as untimely. The Commission holds that where the parties have submitted conflicting evidence regarding whether a computer error is the reason the charge was not received in time, it is appropriate to submit the question of timeliness to the Hearing Examiner as a threshold issue to resolve.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Julien X. Neals, Corporation
Counsel (Alison Brown Jones, Assistant Corporation
Counsel)

For the Charging Party, The Cushane Law Firm, attorneys
(Thomas A. Cushane, of counsel)

DECISION

This case is an appeal of an October 21, 2010 decision of the Director of Unfair Practices that refused to issue a complaint on an unfair practice charge filed by the Newark Deputy Chiefs Association against the City of Newark. The charge alleges that the City violated section 5.4(a)5 of the New Jersey Employer-Employee Relations Act when it unilaterally modified and reduced the number of health benefit options for unit members from three to two and increased employee health care contributions between 60% and 294% depending on plan selection.

According to the charging party, on May 25, 2010, it forwarded an unfair practice charge to the Commission. When it

later made an inquiry to Commission staff as to the status of the charge, the charging party was notified that the Commission had no record of receiving it. On August 31, the unfair practice charge was received by the Commission via e-mail and docketed. On September 1, the Deputy Director of Unfair Practices notified the Association that the charge did not meet all the requirements of N.J.A.C. 19:14-1.3. Specifically, the letter stated the charge did not include:

The date(s) the alleged unfair practices occurred. Your charge must be filed within six months from when the unfair practice occurred, unless you were prevented from filing a charge. If you were prevented from filing on time, your charge must state how you were prevented, and must be filed within six months of the date you were no longer so prevented. See N.J.S.A. 34:13A-5.4(c).

On September 14, 2010, the charging party submitted to the Director of Unfair Practices the certification of Edmund F. Giordano, Deputy Executive Director of the Fraternal Order of Police - New Jersey Labor Council stating that he served the charge on the Commission via e-mail and on Brendan E. Egan, an attorney with the City's Law Department, via facsimile on May 25.

On October 18, 2010, the City responded by letter that it did not have a record of receiving a copy of the charge on May 25.

On October 21, 2010, the Director dismissed the charge as untimely filed finding:

Given the City's response, and absent the production of a signed return receipt card for the mailing to the City, there is insufficient basis upon which to conclude that the charge was served on May 25, 2010.

While I have every confidence in the veracity of the Union's Deputy Executive Director and believe he took action to fax^{1/} the charge to the Commission, since we have no record of its receipt, I must treat the charge as filed on August 31, 2010. The charge alleges dates of October 13 and December 10, 2009 and January 1, 2010, any of which could be the operative date for statute of limitations purposes. Regardless of which date is used, the charge was filed more than six months later. Consequently, it is out of time consistent with N.J.S.A. 34:13A-5.4(c). Therefore, it is not possible to issue a complaint in this matter and the charge is dismissed.

This appeal ensued. On appeal, the charging party has provided further evidence, not initially submitted to the Director to establish its efforts to e-mail the charge on May 25, 2011. It has provided a facsimile confirmation report showing a fax successfully sent to the City of Newark Law Department on May 25 that it alleges was the unfair practice charge. It also provides an additional certification of Giordano wherein he provides additional e-mails he sent to the Commission directed to the Conciliation and Arbitration section on other matters during the week of May 25 that were not received. Counsel for the charging party has also provided a certification and copy of the

^{1/} We note that the charging party alleges it e-mailed the charge. The Director's statement was in error.

e-mail he received from Giordano filing the charge on May 25 and the e-mail he forwarded to his assistant requesting that she open a new file for the matter on May 25. These e-mails also show the Commission's e-mail as the primary addressee. Finally, the charging party alleges that the charge is timely because the alleged actions of the City constitute a continuing violation of the Act.

In response, the City of Newark has provided a certification of Brendan Egan, Assistant Corporation Counsel. Egan certifies that he did not receive a copy of the unfair practice charge and has no record of it in his system for incoming mail.

The parties have provided conflicting information as to the timeliness of the charge. On this record, we are unable to make a determination on the timeliness issue. If timely, the charge meets our complaint issuance standard. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. Accordingly, we remand the case to the Director of Unfair Practices to issue a complaint. The parties can present their evidence and argument to the Hearing Examiner as a threshold issue regarding timeliness.

ORDER

The unfair practice charge is remanded to the Director of Unfair Practices for Complaint issuance.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Krengel and Wall voted in favor of this decision. None opposed. Commissioner Voos was not present.

ISSUED: October 27, 2011

Trenton, New Jersey